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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/612,196

07/02/2003

Keith FitzPatrick

930036-2008

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20999 7590 01/30/2009
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EXAMINER

PIZIALI, ANDREW T

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

01/30/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Response to Amendment

1. The amendment filed on 11/4/2008 has been entered.

Claim Rejections - 35 USC § 102/103

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-11, 13 and 32-40 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over USPN 5,753,085 to FitzPatrick.

Regarding claims 1-11, 13 and 32-40, FitzPatrick discloses a long nip press belt for a papermaking machine comprising a textile substrate comprising a plurality of individual layers impregnated and coated on both sides with a polymeric resin (see entire document including Figure 6, column 3, line 57 through column 4, line 15, and column 5, lines 38-49). The textile substrate includes textile components such as monofilaments, continuous fine filaments or staple fibers having non-circular cross sections with a plurality of lobes (column 4, lines 27-31). The laminate is held together by chemical bonding (abstract). The textile can be woven and/or

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nonwoven (column 4, lines 11-15). The polymeric resin material may be polyurethane (column 3, lines 63 and 64). The filaments may be interwoven from machine direction and cross-machine direction (column 4, lines 64-67).

It is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show an unobvious difference between the claimed product and the prior art product.

Claim Rejections - 35 USC § 103

5. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,753,085 to FitzPatrick as applied to claims 1-11, 13 and 32-40 above, and further in view of EP 0 960 975 to Davenport.

FitzPatrick appears to be silent regarding the outer surface having grooves or blind-drilled holes, but Davenport discloses that it is known in the art to supply the substrate with grooves or blind-drilled holes for the temporary storage of water (see entire document including [0031] and [0032]). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include grooves or blind-drilled holes in the substrate, motivated by a desire to supply the substrate with temporary storage of water.

Response to Arguments

6. Applicant's arguments filed 11/4/2008 have been fully considered but they are not persuasive.

The applicant asserts that FitzPatrick fails to teach or suggest the claimed substrate because FitzPatrick allegedly combines individual layers and then impregnates the combination of layers. Applicant's argument is not persuasive because the applicant has failed to show that the process disclosed by FitzPatrick results in a patentably distinct structure. The applicant asserts that the claimed process causes a fairly complete lamination between adjacent layer at nearly 100 percent coverage. Applicant's argument is not persuasive. Firstly, it is well settled that unsupported arguments are no substitute for objective evidence. *In re Pearson*, 494 F.2d 1399, 1405, 181 USPQ 641, 646 (CCPA 1974). Secondly, the applicant has failed to show that the process disclosed by FitzPatrick results in fairly incomplete lamination between adjacent layer at less than about 100 percent coverage.

The applicant asserts that Fitzpatrick does not teach or suggest a multi-layer structure. The examiner respectfully disagrees. Figure 6 clearly illustrates a multi-layer structure. In response, the applicant asserts that the layers of Figure 6 are individual preformed layers prior to being impregnated, but that once said layers are impregnated with one polymeric resin material the layers are no longer "individual preformed layers." The examiner respectfully disagrees. Claim 1 specifically states that an impregnating material is "part of each of said individual preformed layers."

The applicant asserts that Fitzpatrick does not teach or suggest a multi-layer structure. The examiner respectfully disagrees. Figure 5 illustrates a multi-layer structure as evidenced by the Figure being referred to as a "multi-layer weave." In response, the applicant asserts that the multilayer weave of Figure 5 does not include a plurality of individual preformed layers that are first coated/impregnated, because the layers are interwoven. The examiner respectfully disagrees. Applicant's argument is not persuasive because the applicant has failed to show that the process disclosed by FitzPatrick results in a patentably distinct structure.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew T. Piziali whose telephone number is (571) 272-1541.

The examiner can normally be reached on Monday-Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew T Piziali/
Primary Examiner, Art Unit 1794